

## 5. Ethics in the Public Sector

2. Adopt public management measures that affirmatively promote and uphold the integrity of justice and security officials.
3. Establish ethical and administrative codes of conduct that proscribe conflicts of interest, ensure the proper use of public resources, and promote the highest levels of professionalism and integrity.

Stephen D. Potts, Moderator  
Director  
Office of Government Ethics  
United States

The text of Mr. Potts' remarks, as prepared for delivery, may be found in the Appendix. The following is a summary of those remarks.

This conference addresses a critical sector of government. Justice and Security officials have an absolutely essential role in achieving good governance. Fighting corruption within their ranks will bring significant progress in combating all forms of public corruption.

The scope and pace of change in anticorruption efforts over the past decade has been extraordinary. Within the past five years, the OECD has concluded the Convention on Combating Bribery in International Business Transactions, the United Nations has adopted an International Code of Conduct for Public Officials, the World Bank has announced its policy for dealing with corruption and the International Monetary Fund has issued guidelines on governance issues. One other important treaty that deserves mention is the Inter-American Convention Against Corruption, The Convention, recently concluded by the Organization of American States, identifies acts of corruption and creates binding international obligations to act against it. Particularly noteworthy is the fact that it calls for the implementation of specific, practical preventive measures, such as codes of conduct, financial disclosure systems, and ethics education and procurement integrity.

The OECD has also issued a statement of principles for ethical conduct in the public service, which like the OAS Convention, endorses a number of preventive measures, including clear standards of conduct, transparency in decision making, and protection for public employees who expose wrongdoing. The United States Department of State has just published a comprehensive International Strategy Against Corruption (which may be found in the Appendix.) The Office of Government Ethics was pleased to have provided technical assistance in the drafting of many of these instruments.

Preventive measures are an essential component of any comprehensive approach to dealing with corruption. Investigation and prosecution of misconduct is important, but without effective preventive measures to ensure that the majority of public officials and employees maintain high standards of conduct, the investigative and prosecutorial systems could be overwhelmed.

Prevention is the core mission of the Office of Government Ethics (OGE). Established in 1978, OGE is charged with providing overall direction in setting ethics policies to prevent conflicts of interest on the part of United States Executive branch employees. OGE is an independent agency within the Executive branch; the President appoints its Director for a fixed five-year term. The Executive branch ethics program is a decentralized one; each agency is responsible for the day-to-day management of its own ethics program, subject to the policy guidance from OGE. We set policy and provide leadership by:

- Issuing a comprehensive code of conduct;
- Overseeing financial disclosure systems;
- Establishing ethics training requirements;
- Providing ethics advice and counseling;
- Conducting regular reviews of agency ethics programs.

These preventive measures are intended to ensure that the vast majority of Executive branch employees observe high standards of conduct. They are also intended to provide assurance to the public that government employees are meeting these standards, and thereby maintain public confidence in government.

2.10 Systems for promoting the understanding and application of ethical values and the standards of conduct required.

Miria R.K. Matembe  
Minister for Ethics and Integrity  
Uganda

The full text of Ms. Matembe's prepared paper "The Ugandan Experience" may be found in the Appendix. The following is a summary of her remarks.

There is a clear consensus that corruption is an evil that all must fight against. Corruption exists in all participating countries, without exception. It is incumbent on all participants to fight corruption no matter where it arises, or how.

Ethics is primarily concerned with trying to define what is good for the individual, and for society, as well as the nature of the obligations or duties of an individual toward society and toward himself. Public ethics addresses issues of

right or wrong behavior on the part of public officials. Ethical standards in the public service call for discipline, education, integrity, impartiality, accountability, financial credibility and similar characteristics.

To understand issues relating to ethical conduct in Uganda, it was necessary to appreciate the background against which they exist. Fifteen years ago, the current government came into power, succeeding the notorious administration of Idi Amin and inheriting a shattered economy and a country virtually without infrastructure. When this government took power, a general attitude prevailed that everyone should get as much as they could as quickly as possible, because soon one would be dead, or it would be taken from one if they lived. All had adopted strategies of survival.

Since that time, the National Resistance Movement has assumed power and has initiated a ten-point program to restore the rule of law and enable Uganda to reclaim its place in the international community. Now, it is necessary to face the problems of corruption, embezzlement and bribery. As before, in the case of AIDS, when confronted by a problem, the government of Uganda acknowledged the problem and spoke out. As a result, the political will to confront the problem of corruption is at its highest level yet. It is unusual in African countries for officials of high or ministerial rank to face the consequences of corruption. However, in Uganda ministers have been compelled to resign, and corruption issues are a permanent element of parliamentary oversight of government.

In attempting to completely rebuild the institutional infrastructure of the country, it is also vital to begin rebuilding the moral fiber of the country at the same time. It is necessary to face the root of corruption caused by the deterioration of those ethical systems that had once existed and the resulting decline of public morality.

The Department of Ethics and Integrity was established only four months ago. Its role is to develop and promote a comprehensive integrity system in the

2.1 An impartial and specialized institution of government to administer ethical codes of conduct.

government, to minimize opportunities for corruption, make corruption risky and to

promote integrity among public officials. The Department's specific functions include:

- Formulating policy, strategies and frameworks to fight corruption;
- Ensuring enforcement and implementation of recommendations by the Public Accounts Committee of the Parliament (Uganda had a very active Parliament and a press that was free if not always too responsible);
- Promoting integrity in all anticorruption laws and policies;
- Advising on short-, medium-, and long-term interventions;

- Conducting public awareness campaigns;
- Introducing courses on ethics and integrity in school curricula and other media of public education;
- Promoting collaboration with civil society, the media, religious and cultural institutions and non-governmental organization;

The Department has developed specific action plans, and its activities and plans were described in greater detail in the paper that was distributed to participants. We have experimented with innovative techniques, such as the use of dance or drama presentations to reach audiences that included many who were illiterate. The Ethics Department must also work to challenge leaders to maintain their integrity and incorruptibility as they carried out their duties. If the leaders themselves did not embody values, how could others be expected to adhere to them? Success was only possible if there were leaders of integrity who were not corrupt. So, ask yourself as you sit here today and discuss these matters, are you really clean? Are you free of corruption?

2.9 Positive leadership which actively practices and promotes the highest standards of integrity and demonstrates a commitment to prevent and detect corruption, dishonesty and unethical behavior.
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Talking about a problem, however, is the first step to solving it. Uganda would be pleased to send its action plans to the United States Government, as my country needs all the assistance it can secure. With the support of governments and peoples, it would be possible to make a difference against corruption. But the ultimate impact of this effort must be inside the hearts of participants. As long as officials remain greedy for power and wealth, this conference is wasting its time.

Prof. Dr. Luis Nicolas Ferreira  
Director  
National Office of Public Ethics  
Argentina

The full text of Dr. Ferreira's paper, "Etica en el Sector Publico" (in Spanish), may be found in the Appendix, along with accompanying papers "Codigo de Etica de la Funcion Publica" and "Legislacion Argentina en Materia de Etica y Control", and copies (in Spanish and English) of the graphics which accompanied his presentation on "Ethics in the Public Sector". The following is a summary of Dr. Ferreira's remarks.

The subject of corruption has become a central one in practically every country in the world. The World Bank's Institute of Economic Development specifies that: "The highest aspiration of a state should be to achieve an effective system where corruption is a maximum risk with a minimum benefit."

The Inter-American Convention Against Corruption, signed in Venezuela in 1996, recommends the creation of state institutions to implement mechanisms to prevent, detect, punish and eradicate corrupt practices in public administration. On the basis of this recommendation and the experience of other countries, Argentina created the National Office of Public Ethics. This office, established nearly a year ago, has prepared the Code of Ethics for Public Service that is now being implemented.

A code of ethics is a set of legal rules governing the conduct and relationships of a defined group with comparable professional, cultural, social or other status. The public servant participates in complex relationships with his superiors, peers and subordinates, with the property or interests of the state entrusted to him, and with the fellow citizens that he must serve. For this reason, the code, together with the regime of laws applicable to public servants, must establish clear and uniform standards for conduct as well as specify prohibited acts and the sanctions for such acts. A code of ethics is a critical instrument for preventing corruption, and for promoting transparency in public service.

3.1 Prohibitions or restrictions governing officials participating in official matters in which they have a substantial direct or indirect financial interest.

To be successful, a code of ethics must be realistic. It must prescribe standards of conduct that are accepted and shared by those in the institution. These principles depend on consensus acceptance, and are complemented by ethical training and awareness programs for public officials. Certain problems are encountered in the effective implementation of a code, not the least of which are bureaucratic and institutional resistance to new systems and regulations; and public officials viewing regulated standards of conduct as an affront to their individual ethical and moral upbringing. More critically, a code of ethics that requires the public declaration of one's personal financial situation may be resisted by officials who know their actions cannot withstand transparency and exposure.

Certain solutions, however, may allow for the effective implementation of a code of ethics, depending on individual national situations. Some of these solutions might include establishing programs for systematic education, training and assistance to public servants; wide public dissemination of the code among public officials; clear sanctions for violating the code; and, securing political support that can set an example to all public servants of the importance of the code.

2.2 Training and counseling of officials to ensure proper understanding of their responsibilities and the ethical rules governing their activities as well as their own professionalism and competence.

Codes of ethics for public service can be valuable instruments for fighting corruption, particularly when combined with such preventive measures as: reform

of procurement policy; control of customs and security forces; creation of authoritative and independent agencies for internal and external controls; judicial reform; participation of civil society; etc.

The primary benefit of a code of conduct is to consolidate in one body of regulations the standards that direct and regulate the conduct of all public servants. A code has the effect of promoting the transparency of government processes by providing the public with standards to evaluate the conduct of public officials. The presence of a body of standards of behavior encourage public officials to act honestly and efficiently in the conduct of their official duties, which has in turn strengthen society's confidence in their public servants and institutions

Ten years ago, the Republic of Argentina began structural reforms to promote greater efficiency in public functions and end structural corruption. In all of its reform measures, Argentina adhered to the terms of the Inter-American Convention Against Corruption, which was ratified by the Argentine Congress in December 1996 and entered into force on November 7, 1997.

Argentina's Code of Ethics for Public Service and its National Office of Public Ethics respond directly to the provisions of this Convention. The National Office of Public Ethics has three basic functions:

- Operational: to assure the effective implementation of the Code of Ethics developed by the Office;
- Preventive: by programs of advice and assistance to officials; and
- Educational: by programs of training and education for officials.

The success of democratic governance depends on the ability of governments to minimize corruption and misconduct by public officials. In the era of globalization, any crisis in one country quickly has repercussions in others. Corruption is one of the most frequent causes of such crisis, and therefore it represents a threat to the development and growth of democratic institutions around the world. There is no single formula that can be applied to all countries to nurture democracy. However, the people cannot participate in the welfare and development of the rest of the world unless we, their leaders, are competent, honest, just and ethical. This can be accomplished through measures that deregulate, decentralize and de-bureaucratize the economy, while promoting government accountability and responsibility. It is impossible to succeed only by punishing transgressors. It is more effective to eliminate opportunities that cause wrongdoing to occur.

Zhao Hong-zhu  
Vice Minister of Supervision  
People's Republic of China

The text of Mr. Zhao's paper "Build Up a Clean and Efficient Government to Guarantee Sustained Development of Economy" may be found in the Appendix. The following is a summary of those remarks.

China is a developing country with a large population and a weak economic structure. Economic development is the most important task. To provide for sustained development of the national economy, there must be a stable social and political environment. Fighting corruption is one of the preconditions for maintaining stability.

Over the past 20 years, China has been committed to carrying out anticorruption reforms. Starting in 1993, these efforts have targeted the economic system. Any acts of corruption must be punished severely in accordance with the law. Corruption must be prevented by education and establishing codes of conduct, rules and regulations for behavior of officials. Economic reforms are important as well in removing opportunities for corruption.

Since 1993, Chinese efforts have centered on three principal areas.

First, encouraging the leadership to lead by example, and establishing codes of conduct to build the integrity and self-discipline of officials. Standards of conduct prescribe certain types of conduct that are prohibited, such as engaging in business or activity on the stock exchange. Chinese officials are required to examine their own conduct in the light of these regulations. Other regulations address the prohibition of extravagance and waste, specifying for example that construction of government buildings must be strictly controlled and luxurious living at public expense was prohibited. The people are asked to monitor the conduct of government officials, and any breaches of these standards are strictly punished.

Cases of corruption and corrupt officials are seriously investigated. Such investigations have addressed graft, bribery, embezzlement, and also corruption

6.5 The development of appropriate information gathering mechanisms to prevent, detect and deter official corruption and dishonesty.

in the financial sector, the stock market and construction. Investigations have addressed a serious problem of smuggling and foreign exchange

speculation and fraud. Investigations proceed from the principle that every individual is equal before the law. Any individual breaking the law or breaching regulations and discipline is dealt with according to the law, regardless of how high his or her rank might be. The Ministry has established systems to protect

whistleblowers, and eighty percent of corruption cases have been initiated in response to reports from such whistleblowers on improper conduct on the part of government officials.

Third, it was necessary to correct misconduct or misbehavior in public administration. China was in transition from a socialist planned economic system to a socialist market economic system. This transitional process occasionally created opportunities for officials to act for their own benefit rather than in the best interests of the country, in such areas as traffic control, forestry, imposing improper fees. Such misconduct was a source of great dissatisfaction by the public, and authorities had to act to identify and correct them.

Promoting government integrity and fighting corruption depended on development of the rule of law. China is accordingly seeking to develop an adequate legal system, with laws and regulations to establish standards for officials. In 1997, the criminal code was revised to add articles making it a crime for a state employee to take a bribe. From last year, leading officials have been held responsible for integrity in their institutions, and they may be disciplined or removed from their posts if major corruption occurs under their responsibility. Officials are required to disclose their income and assets, and in 1998 an accountability system was created for public officials.

4.3 Laws affirming that all justice and security officials have a duty to provide honest services to the public and criminalizing or sanctioning breaches of that duty.
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The prevention of corruption depends on implementation of economic reforms to create a government in which the breeding grounds for corruption have been removed. In 1998, China carried out a substantial reduction in the size of its government, reducing the number of departments and the size of the staff in the central government in a reinventing process. In March 1998, the Ministry of Supervision worked with the Ministry of Construction to correct abuses in the construction sector by establishing a system in which construction projects were open to public bidding.

China has also made efforts to strengthen democratic accountability over public affairs. Village and enterprise committees have access to public business, and activities of the government are regularly reported to the people. China attaches great importance also to the ethical education of public servants and the people, and is therefore implementing a five-year ethics education plan to accomplish this goal.

Under China's constitution, the State Council is responsible to lead in the supervision of government activities. Within the State Council, the Ministry of Supervision was responsible for administrative control to improve public administration and promote the integrity of government and lead officials to act as they are supposed to. The Ministry supervises all departments under the

State Council and their personnel, the heads of provincial, city and local level governments. These supervisory institutions function independently in accordance with the law, and are not subject to outside interference. They may inspect and investigate, and recommend or take disciplinary action against officials, including providing an administrative warning, demotion, and dismissal from either office or from the public service.

The Ministry of Supervision is committed to promoting stability and pursuing the struggle against corruption, and is prepared, on the basis of mutual respect, mutual benefit and equal status, to conduct exchanges and cooperation with comparable institutions of other governments in the common effort to promote clean and honest government.

Prof. Enrico Zanelli  
University of Genoa  
Italy

The text of an outline and list of issues for discussion provided by Prof. Zanelli may be found in the Appendix. The following is a summary of Prof. Zanelli's remarks.

Like the Founding Fathers of the United States, I am engaged in an errand into the wilderness, in this instance a mission against corruption. Speaking as a professor of law and a corporate lawyer, I suggest a need to move back to basics in the legal system to achieve ethics in the public sector. I will address the issue of corruption in the broader perspective of a relationship between economic leverage, political power, conflicts of interest, and undue influence trickling down from government and political leaders to justice and security officials. The system of public ethics in the United States is superior to any other known model. While obviously not perfect, it is worthy of emulation, provided it is realized that this holds true in the context of the particular civic tradition and constitutional culture present in the United States, which is not always present in all countries.

A year before, at a conference in Bucharest on morality in government, the President of Romania correctly noted that both Nicolo Machiavelli and Giovanni Sartori of Colombia University correlate the amount of corruption in any state at any given time with the foundation or basic conditions and the power of the prince, or the mechanics on which modern governments were based. In recent years, there has been a movement toward seeking to control corruption by creating institutional machinery. There has been a rise of relativistic morals, in which people feel more the masters of their own actions and have fewer restraints on their individual choices than has been the case in the past. Perhaps, as the Vice President has suggested, it is possible to bring individuals back to their moral senses. On the other hand, it is preferable not to see ethics

in government solely as an issue of individual morality. Other factors also enter importantly into this matter.

In the modern world, money represents not only gold, or the production of goods and services, but also the production of information. Economics is the key factor to fighting corruption, and the issue is how to make economics and institutional arrangements work together. Cost and benefit analysis is one approach. Neither economics nor politics by itself is sufficient as a basis to assure public ethics. There is also a need for effective rules, and most countries did not have any of those that Roman, or perhaps Islamic law provide.

The United States Ethics in Government Act of 1978 represents a model for countries still struggling to define laws and judicial procedures necessary to address the complex issues of corruption among public officials. In Italy, only a few years ago, long established interests had not needed to exchange money for

3.2 Prohibitions or restrictions on officials participating in official matters in which persons or entities with whom they are negotiating for employment have a financial interest.

favorable executive or legislative action, since the outside interests and government decisions makers had become one and the same group.] The public official had become able to carry private

economic interest into public office, where he could behave to his own private personal or group benefit. This situation arose because Italy lacked any meaningful law on conflict of interest; such a law had been prepared, but it had never proven possible to gain its approval. A country could find its entire system jeopardized unless it could develop an adequate regime of rules including conflict of interests, anti-trust laws and other rules necessary to insulate the exercise of official power or authority from the influence of individual interests. Every citizen had the right to gain and hold property, and to enjoy the benefits of it, but money gave no one the right, much less the responsibility of becoming president.

I would close by reemphasizing the importance of constitutional tradition and civic culture. For years the United States has been the paragon of both of these features and it is no coincidence that the United States has also set the leading example of how to create and enforce the standards to which political leaders must be held accountable. This achievement is best summarized by paraphrasing an observation by a former president of Germany who said that while by politics it is not possible to put new life into culture, with culture it might perhaps in some instances be possible to put new life into politics.

Elaine Kaplan  
Special Counsel  
Office of Special Counsel  
United States

The text of Ms. Kaplan's remarks, as prepared for delivery, may be found in the Appendix. The following is a summary of those remarks.

I would like to address the concept of whistleblower protection and the role it plays in the fight against governmental corruption. Without effective protection for whistleblowers, any anticorruption effort will fail, because it denies those fighting corruption the most valuable stock of information about its existence, public employees.

Whistleblower protection laws are designed to foster an environment in which public employees feel free to publicly disclose misconduct that they discover during the course of their employment. The theory is that because of their work, public employees are uniquely placed to bring attention to official corruption, and are valuable instruments of good government. At the same time, however, unlike private citizens, public employees are uniquely vulnerable to retaliation by the officials whose corruption they disclose.

In the United States, public employees who risk their livelihoods to bring misconduct to light are called "whistleblowers". The word itself is of relatively recent origin, and seems to have come into use in the 1960s or early 1970s, and suggested a person who, like a police officer or soccer referee, makes a loud noise to bring attention to a violation of laws or rules. In some cultures, there is a negative view of blowing the whistle - whistleblowers were considered to be informers, who are generally feared and despised. However, informers differ from whistleblowers. Whistleblowers generally are anti-authoritarian, and act in the public interest, often against their own self-interest.

The United States Office of Special Counsel was established about twenty years ago. One of its primary purposes is the protection of whistleblowers. It was

8.3 Provisions to support and protect whistleblowers and aggrieved private parties.
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established in the wake of well-publicized allegations of retaliation by some Federal agencies against

employees who disclosed wasteful spending and contract abuses, particularly in the defense agencies. It was felt that public employees needed legal protection and an advocate to enforce those protections.

The Office of Special Counsel receives complaints of retaliation, investigates them, and in appropriate cases, pursues legal remedies. These may include corrective action for an injured employee, for example, back pay. It may also include discipline of agency officials that engage in retaliation. An

independent agency, the Merit Systems Protection Board, resolves complaints that the Office of Special Counsel brings against other Federal agencies, with some opportunity for review in Federal courts.

The Office of Special Counsel also is a channel for employees to anonymously disclose official misconduct. Each Federal agency has an Office of Inspector General that is devoted to such disclosures, but the Office of Special Counsel has government-wide jurisdiction to receive disclosures from any agency and forward them to the head of the agency for investigation and a public report.

The Office of Special Counsel is independent of the Executive Branch. Its head is appointed by the President, with the approval of the United States Senate, but does not serve at the pleasure of the President. The Special Counsel has a fixed term of five years, and can be removed only for misconduct or malfeasance. The staff of the Office is composed largely of career Federal employees with civil service protections that prevent them from being subject to political control. The reasons for this special status is to ensure that the Office will not be subject to political influence or pressure in the conduct of its investigations or in prosecution decisions. It must be able to advocate on behalf of the lowest level employee against officials at the highest levels, including members of the Cabinet.

The laws that the Office of Special Counsel enforces cover the majority of Federal employees, including those in law enforcement administration and Federal police officers. Its jurisdiction does not extend to certain agencies whose work is exclusively related to national security, nor the Federal Bureau of Investigation, which now has its own internal set of protections for whistleblowers. Its jurisdiction extends to applicants for Federal jobs.

The laws it enforces make it illegal to take a "personnel actions" against an employee because the employee has made a protected disclosure. This law is intentionally broad, and is written to make it as easy as possible to prove a relationship between a disclosure and a personnel actions. It is fair to say that the law was written so that all doubts are resolved in favor of protecting an individual who makes a public disclosure. The disclosure may be any information relating to a violation of law, rule or regulation, a gross waste of funds, gross mismanagement, abuse of authority, or a significant and specific danger to public health or safety. A personnel action is almost any employment related decision that has an impact on an employee, including removal, denial or promotions, reassignments or the creation of a hostile work environment.

The Office of Special Counsel employs a staff of professional investigators who have the power to compel witness testimony and the production of documents. Attorneys review investigators' reports to determine whether an illegal personnel action occurred. If so, a letter is sent to the head of the agency

requesting corrective action. If the agency does not comply, the Office may prosecute the case before an administrative judge, whose decision may be reviewed by the Merit Systems Protection Board. The whistleblower may appeal decisions if he or she does not prevail, but the agency generally has no right of appeal. If the Office decides not to pursue a case, an individual may also claim relief as a whistleblower before the Merit Systems Protection Board. The Office may also seek disciplinary action against an agency official who has engaged in retaliation.

Providing legal protection to whistleblowers is a key component of any systematic effort to fight corruption in government. The United States believes that its system of legal protections, independent investigation and review of allegations of retaliation, provide whistleblowers with strong assurance against retaliation, and encourage them to come forward and speak out in the public interest. In the absence of such legal protection, the public would lose the best source of information about official corruption: the government employee with the integrity and courage to reveal it.

